

### **REMARKS/ARGUMENTS**

These remarks are submitted in response to the Office Action dated January 22, 2008 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Examiner is expressly authorized to charge any deficiencies to Deposit Account No. 50-0951.

On the basis of new grounds of rejection noted in the Office Action, each of the claims was rejected. Claims 1-3, 5-9, 16-18, and 20-24 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Published Patent Application No. 2001/0014868 to Herz (hereinafter Herz). Claims 4, 10-13, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Herz in view of U.S. Published Patent Application 2001/0039514 to Barenbaum (hereinafter Barenbaum).

Although Applicants respectfully disagree with the rejections, Applicants nevertheless have amended certain claims so as to expedite prosecution of the present application. Applicants respectfully note, however, that the amendments are not intended as, and should not be interpreted as, the surrender of any subject matter. Accordingly, Applicants respectfully reserve the right to present the original version of any of the amended claims in any future divisional or continuation applications from the present application.

In particular, Applicants have amended independent Claims 1, 10, and 16 so as to further emphasize certain aspects of the invention. As discussed herein, the claim amendments are fully supported throughout the Specification. No new matter has been introduced through any of the claim amendments.

### **Claim Amendments**

At this juncture it may be useful to reiterate certain aspects of the invention. One embodiment, typified by amended Claim 1, is a computer-implemented method of providing promotional material.

The method can include generating in a merchant computer system a merchant request to stimulate commerce for merchant-specified products. The method also can include establishing a computer communications session between the merchant computer system and a third-party remote shopping stimulation system, wherein the merchant request is conveyed to the third-party remote shopping stimulation system. Additionally, the method can include reading with the third-party remote shopping stimulation system consumer purchase information from a plurality of merchant computer systems, the consumer purchase information comprising consumer identifying information, purchased product information, and communication mode information in which promotional material can be delivered to a particular consumer. (See e.g., Specification, paragraph [0029], lines 1-7.)

Based at least in part on the consumer purchase information, one or more potential consumers who have previously purchased one or more of the merchant-specified products can be identified according to the method. The method can also include determining based upon predetermined product attributes, irrespective of merchant inventories, that at least one of the merchant-specified products is an obsolete product when a new or alternate version of the at least one of the merchant-specified products has at least one among current availability and expected availability within a predetermined time period, and ascertaining which of the identified potential consumers previously purchased at least one of the obsolete products. The method further can include, in the third-party remote shopping stimulation system, generating promotional material for the new or alternate version of the at least one of the merchant-specified products for the one or more potential customers ascertained as having previously purchased the at least one of the merchant-specified products identified as an obsolete product, and associating the promotional material corresponding to the new or alternate version of the at least one of the merchant-specified products with the ascertained consumers.

The method can further include determining for each of the identified consumers whether promotional material can be delivered via regular mail, electronic mail,

telephone communication, or Internet communication. (See, e.g., Specification, paragraph [0029], lines 1-10.) Specifically, the determination for each particular identified consumer can be based upon communication mode information uniquely corresponding to the particular consumer. (See, e.g., Specification, paragraph [0029], lines 7-15.)

Accordingly, the promotional material can be made available to the identified consumers using a promotional material delivery system. More particularly, the delivery system can deliver promotional material to each particular identified consumer via the communication mode indicated by the communication mode information uniquely corresponding to the particular consumer. (See, e.g., Specification, paragraph [0029], lines 7-15.)

### **The Claims Define Over The References**

As already noted, independent Claims 1, 16, and 20 were rejected as being anticipated by the newly-cited reference, Herz. Herz is directed to a system and methods for determining "customized prices" and "promotions" based upon "type" and other characteristics of customers. (See, e.g., Herz, paragraph [0020], lines 1-6; see also Abstract.) Applicants respectfully submit, however, that Herz fails to teach, expressly or inherently, each of the features recited in amended Claims 1, 10, and 16.

Herz, for example, does not make any computer-implemented determination, based upon communication mode information, as to which communication mode – electronic message, telephonic message, mail – a promotion can be delivered to a particular consumer or potential customer, as recited in Claims 1, 10, and 16. Herz maintains a consumer profile, which includes information indicating a particular consumer's identity and that consumer's "goals." (See, e.g., Herz, paragraphs [0034]-[0037].) Herz, however, fails to provide any type of communication mode information uniquely corresponding to a particular consumer or potential customer, as recited in the claims.

Not surprisingly, Herz fails entirely to provide any mechanism whereby communication mode information is utilized to determine the appropriate communication mode – be it electronic message, telephonic message, or mail – for providing promotional material to a particular consumer.

Herz refers to a vendor's election to convey offers via telephone, mail, or over the Internet. (See, e.g., Herz, paragraph [0051], lines 1-4.) A critical distinction, however, is that the election is up to the vendor. Herz provides no computer-implemented method for determining which among different modes of communication a promotion can be conveyed to a consumer or potential customer, as recited in Claims 1, 16, and 20. With Herz, the election of a mode of communication for a particular consumer or potential customer is wholly extraneous to the system. The election is solely up to the vendor. Although, a customer can choose to respond to a vendor's solicitation via different modes of communication, the choice is, again, extraneous to the system, being made solely by the customer.

It follows that Herz fails to expressly or inherently teach a computer-implemented mechanism for determining the mode of communication to be used to convey promotional material to a particular consumer. Specifically, Herz does not teach or even suggest providing communication mode information indicating in which communication mode promotional material can be delivered to a particular consumer, as recited in Claims 1, 10, and 16.

It further follows, therefore, that Herz fails to teach or suggest a computer-implemented procedure by which, based upon the communication mode information uniquely corresponding to a particular consumer, a determination is made as to whether promotional material can be delivered to the particular consumer via regular mail, electronic mail, telephone communication, or Internet communication, as further recited in Claims 1, 10, and 16. Herz thus further fails to teach or suggest a deliver system or computer-implemented procedure whereby promotional material is delivered to each particular consumer via the specific communication mode indicated by the

communication mode information uniquely corresponding to the particular consumer, as also recited in Claims 1, 10, and 16.

Barenbaum, cited with respect to certain dependent claims, is directed solely to the delivery of "digital deals" via wireless devices. (See, e.g., Barenbaum, paragraph [0019], lines 1-28; see also Abstract.) Barenbaum nowhere addresses the availability of alternate modes of communication, let alone for determining which among different modes can be used to convey promotional material to a consumer in accordance with communication mode information uniquely corresponding to the consumer. Thus, even if combined, the combination of Herz and Barenbaum yet fails to teach or suggest every feature recited in Claims 1, 10, and 16.

Applicants respectfully submit, therefore, that Claims 1, 10, and 16 each define over the prior art. Applicants further respectfully submit that, whereas each of the remaining claims depends from Claim 1, 10, or 16 while reciting additional features, each of the dependent claims likewise defines over the prior art.

### **CONCLUSION**

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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